

**IN THE HIGH COURT OF ORISSA AT CUTTACK****WP(C) No.17395 of 2008**

(Through Hybrid mode)

***Atala Bihari Das***

....

***Petitioner***

Mr. Ramanath Acharya, Advocate

Mr. B. Barik, Advocate

Mr. P. M. Rao, Advocate

*-versus-****M.D. O.F.D.C. and others***

....

***Opposite Parties***

Mr. Santosh Kumar Pattanaik, Advocate

Mr. S. Pattanaik, Advocate

Mr. D. Pattanaik, Advocate

Mr. U.C. Mohanty, Advocate

Mr. P.K. Patnaik, Advocate

**CORAM:****JUSTICE ARINDAM SINHA****JUSTICE SANJAY KUMAR MISHRA****ORDER****04.11.2022****Order No.**

31. 1. Mr. Acharya, learned advocate appears on behalf of petitioner and submits, his client was denied wages on discharging duties of Junior Clerk. Impugned award carries finding that is perverse.
2. He draws attention to annexure 7, disclosed in the rejoinder, to demonstrate therefrom there were several persons employed as clerks, having academic qualification H.S.C. There is no dispute that

the additional qualification in typewriting was also possessed by his client. On query from Court he submits, his client has achieved age of superannuation.

3. He relies on judgments of the Supreme Court.

i) **Bhagwati Prasad v. Delhi State Mineral Development Corporation**, reported in **AIR 1990 SC 371**, paragraph 6, from where a passage is extracted and reproduced below.

*“ xx xx xx Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In our view, three years' experience, ignoring artificial break in service for short period/periods created by the respondent, in the circumstances, would be sufficient for confirmation. xx xx xx ”*

ii) **Union of India vs. Dineshan K. K.**, reported in **(2008) 1 SCC (L&S) 248**, paragraph 12 reproduced below.

*“12. The principle of “equal pay for equal work” has been considered, explained and applied in a catena of decisions of this Court. The doctrine of “equal pay for equal work” was originally propounded as part of the Directive Principles of the State Policy in Article 39(d) of the Constitution. In Randhir Singh Vs. Union of India a bench of three learned Judges of this Court had observed that principle of equal pay for equal work is not a mere demagogic slogan but a constitutional goal, capable of being attained through constitutional remedies and held that this principle had to be read under Articles 14 and 16 of the Constitution. This decision was affirmed by a Constitution Bench of this Court in D.S. Nakara Vs. Union of India. Thus, having regard to the constitutional mandate of equality and inhibition against discrimination in Articles 14 and 16, in service jurisprudence, the doctrine of ‘equal pay for equal work’ has assumed status of a fundamental right.”*

4. Mr. Pattanaik, learned advocate appears on behalf of the management. He draws attention to impugned award. He submits there was clear finding on fact that qualification required was intermediate with typing but petitioner was only matriculate. Relied upon paragraph in the award is extracted and reproduced below.

*“M.W. No.1 deposed that the qualification for the post of Junior Clerk is Intermediate with typing and this version of M.W. No.1 remains unchallenged. Admittedly, the*

*workman is a Matriculate. So, he has also no necessary qualification to act as a Clerk.”*

5. He too relies on judgments of the Supreme Court.

i) **Sanjukta Pattanaik vs. State of Orissa**, reported in (1997) 9 SCC 624, paragraph 3 (law encyclopedia premium edition print). He submits, this judgment was relied upon by the Labour Court. Relevant passage from paragraph 3 of the judgment is extracted and reproduced below.

*“3. It is seen that appointment should be in accordance with the Rules to a post as defined under Rule 2(b) of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Education Institutions) Rules, 1974. Since the petitioner was working in a clerical post, she is not entitled to be approved and the view taken by the Director is correct. Admittedly, she was appointed as a clerk. While working as clerk, the mere fact that she was kept in charge of the teaching post, does not confer any right to appointment to a post, because she was not initially appointed to a teaching post. The Full Bench, therefore, has rightly interpreted that the initial appointment should be to a teaching post and a clerk, though directed to discharge the duties as a teacher, cannot claim the post as a teacher.”*

ii). **Umesh Chandra Gupta vs. Oil and Natural Gas Commission**, reported in **AIR 1989 SC 29**, paragraph 5 (law encyclopedia premium edition print). Said paragraph is reproduced below.

*“5. The high Court, however, in the instant case, has examined the qualifications and respective terms of appointment of technicians Grade II and Grade III. The High Court has summarised thus: “It is, therefore, quite clear that in the advertisement of 1968, the qualifications required were higher than those required prior to that. Again it is pertinent to note that from 1962 the training was to be taken for a period of two years. In 1966, the period of training was raised to three year. In 1967, the period was again brought down to two years, but the required qualifications were higher than what were required previously. In 1968, the period of training was two years There also the qualification required were higher than those required in 1966 and prior to that. It is quite clear from all these advertisements that the attempt of the Commission was to attract better qualified persons for the posts of technicians Grade II””*

He submits, there has been no case made out for interference by judicial review.

6. The dispute referred became issue no.1 in the reference. The dispute/issue is reproduced below.

*“1. Whether Sri Atal Bihari Das, Watcher in the Office of the Divisional Manager, O.F.D.C., Ltd., Karanjia (Commercial) Division, At/P.O. Karanjia working as Clerk is entitled for wages of Junior Clerk ? If so, what will be the details ?”*

It is clear from the dispute referred, to become the issue framed that controversy was not regarding whether petitioner was entitled to promotion or regularization in the post but on him being entitled to wages of Junior Clerk.

7. On perusal of the award we came across a finding, extracted therefrom and reproduced below.

*xx xx xx It is true that the documentary and oral evidence reveal that the workman was asked temporarily to discharge the function of a Clerk **but this is not sufficient to regularize him as a Clerk or to appoint him as a Clerk** nor this gives a right to the workman to claim the post of Clerk. xxx xxx xxx. In this case also the initial appointment of the workman was a Forest Worker or a Watcher. So, even if the authorities granted certificates and directed him to discharge the function of a Clerk, **he has no right to claim the post of Clerk.**”*

(emphasis supplied)

Above findings leading us to conclude that the tribunal found on fact that petitioner had discharged duties of Junior Clerk.

8. Declaration of law in **Dineshan K. K.** (supra) is clear that 'equal pay for equal work' is a doctrine that has assumed status of a fundamental right. In that view of things, the tribunal appears to have acted with material irregularity in answering the issue from the point view of whether petitioner was entitled regularization in or promotion to the post, on not having requisite qualification. It is true that disclosure in the rejoinder relied upon by Mr. Acharya was not there in the tribunal but the management, in urging lack of academic qualification, did not produce relevant evidence of it having employed persons as clerks, with academic qualification H.S.C.

9. In view of aforesaid, **Bhagwati Prasad** (supra), **Sanjukta Pattanaik** (supra) and **Umesh Chandra Gupta** (supra) are not applicable to the case.

10. Impugned award is set aside and quashed. We direct, instead of restoration, the management will calculate the difference in wages payable between Junior Clerk and Forest Watcher, for certified periods, in which petitioner discharged duty as Junior Clerk and pay same to petitioner by 15<sup>th</sup> December, 2022, failing which the

aggregate arrear will carry interest at 5% per annum simple from 26<sup>th</sup> November, 2008 (date of presentation of the writ petition), till date of payment.

11. The writ petition is disposed of.

**( Arindam Sinha )**  
**Judge**

**(S. K. Mishra )**  
**Judge**

*Prasant*

